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NOTES OF THE WEEK

Time for Stating Case

If a case is not stated by magistrates within the statutory period of three months from the date of application, the High Court may in its discretion extend the time, but this must not be taken for granted. If through no fault of the appellant a case is not stated in time, the Court may extend the time or hear a Case Stated out of time, *Moore* v. *Hewitt* (1947) 111 J.P. 483; [1947] 2 All E.R. 274. It is for the appellant to ask for an extension. If there has been a complete disregard of the rules the Court is not disposed to grant an extension, *Rippington* v. *Hicks & Sons (Oxford) Ltd.* (1949) 113 J.P. 121; [1949] 1 All E.R. 239. In *Roberts* v. *Evans and Evans* (1949) 113 J.P. 137, Lord Goddard, C.J., made observations on the duty of the appellant to apply for an extension particularly where the lapse of time is due to the respondent or the justices' clerk or the justices.

The point was again emphasized in *Whittingham* v. *Nattrass* [1958] 3 All E.R. 145, in which the case was stated out of time and no application for extension had been made. The Divisional Court heard the case in spite of this and of the fact that there had been non-compliance with the Rules of the Supreme Court in certain respects. Lord Goddard, C.J., said that if magistrates did not state the case within the three months an application for extension should be made with reasons stated, because if the failure of the magistrates was due to the fault of the applicant the Court would not as a rule extend the time. As to the failure to comply with the Rules of Court relating to the setting down and lodging of the case and the service of notice on the respondent, the Lord Chief Justice said that consents could not be filed to set aside the Rules of Court.

Road Traffic Prosecutions and Civil Proceedings

In cases where there has been an accident involving two vehicles it is quite possible that there may be a prosecution by the police against one driver for dangerous or careless driving and also a civil action between the two drivers or owners. Usually the criminal prosecution takes place first, and the decision whether to bring or defend an action may be affected by the result of the prosecution, although the judgment in the criminal proceedings would be irrelevant in the civil action. As stated in *Phipson on Evidence* "A judgment in a civil action is in general no evidence of the truth of the matter decided against the same person in a criminal trial, or *vice versa*, since the parties are necessarily different; moreover, the burden of proof is not the same, the defendant in the criminal trial cannot avail himself of the admissions of the plaintiff in the civil one and the jury in the latter may decide upon a mere preponderance of evidence, *Castrique* v. *Imrie* (1869) L.R. 4; H.L. 414.

It is often suggested that in criminal proceedings the defence is conducted with one eye on the possibility of civil action and that in consequence cases occupy far more time in the magistrates' court than they need. Mr. Albert Platt, clerk to the Ashton-under-Lyne justices, is outspoken on this subject in his report for the year 1957–58. After referring to the large number of road traffic cases coming before the courts, he adverts to cases of driving without due care and attention, and says that many of them would never have been fought at all if it were simply the criminal charge before the court which was being considered by the defendant and not the eventual civil claim for damages and where the insurance company are providing and paying for legal assistance simply for the purpose of having a "dummy run" for a civil claim. He goes on:

"Why the prosecution play into the hands of the defence is beyond my comprehension, but consistently we have the same old opening: 'This case arises out of an accident,' followed by masses of detail of damage to vehicles, when the truth is that the case does not arise out of an accident at all, but by reason of the fact that someone overtook when it was not safe, reversed without looking, came out of a side street without taking precautions, or otherwise showed lack of care and attention in his driving. The fact that there was an accident is immaterial except as some proof

that the defendant was not driving with the care and attention or consideration for other road users required by the criminal law. Very often at the end of the prosecution's opening nothing whatever has been said about the precise allegations, but a mass of detail given which the bench are presumably to sort out to decide whether or not there is a case."

Compensation

The power of criminal courts to award compensation or damages is very limited, and persons who seek such compensation or damages must generally find their remedy by action in a civil court. Certain statutes empower a court upon conviction of certain offences to award compensation or damages to persons who have suffered as the result of the offence. Examples are to be found in the Forfeiture Act, 1870, and in s. 11 (2) of the Criminal Justice Act, 1948.

In his report Mr. Platt criticizes some of the recent legislation including the First Offenders Act, 1958, and expresses the opinion that when statistics show that crime is booming and lawlessness rampant it is the proper time for extending the powers of courts and not reducing them. He then proceeds to ask a question that many people will think perfectly reasonable. Why, except in larceny and a few other offences, can compensation only be awarded where the defendant is placed on probation or given a conditional discharge? If someone takes and drives away someone else's car or van and does damage to it, he says, why should the defendant have to go on probation or conditional discharge so that the damage can be paid for? The offence may justify stronger action.

It is not easy to give a short and satisfactory answer to such a question, but it does suggest a line of inquiry into the powers of the courts in this respect.

Miss Fry's Scheme

On this question of compensation to victims of offences, it is interesting to recall that in the House of Commons on July 10, the Home Secretary referred to a scheme, under consideration at the Home Office, put forward by the late Miss Margery Fry for compensation to be paid by the State to victims of crimes of violence on a scale similar to that under the Industrial Injuries Scheme which should take the form of payments analogous to the injury, disablement and death benefits at present paid under that scheme: Mr. Butler referred to the difficult and complex problems involved, and said he could not yet make any statement of Government policy.

It has frequently been said that everything is done nowadays for offenders and little or nothing for their victims. Miss Fry devoted much of her efforts to advocacy of reform of penal methods, but she was level headed as well as enthusiastic, and having seen many of the measures she advocated put into practice she turned her attention to the need for doing something for those who suffer by reason of offences. It is within our knowledge that this was one of the last tasks, possibly the very last, which she undertook, and upon which she worked while in hospital during her last illness.

Young Offenders, Past and Present

People with long memories of the criminal courts and offenders will have read with interest a letter from the Rev. Lempriere Hammond which appeared in *The Times* of August 25. Mr. Hammond recalls the earliest days of the first borstal institution, in whose activities he took some part. He draws a sharp contrast between its inmates and those who constitute the present day problem of adolescent offenders. The first inmates mostly came from homes in which there was poverty and lack of opportunity. Any personal interest in the well-being of the early borstal population found a ready response, and an obvious measure of co-operation in the work of reformation. Today he finds a very different attitude. In spite of slum clearance, increased educational opportunities and security against poverty and unemployment, advantages which have been enjoyed by their parents, there is to be found in these young people a spirit of lawlessness associated with violence and antagonism to society which was quite unknown, so far as his experience was concerned, in the far-off days of 1909. Mr. Hammond is prompted to ask how far social betterment and increased opportunity have found their fulfilment in the one area of supreme importance: the area of family life, no longer subject in any comparable measure to the fear of poverty and insecurity of earlier times, and how much is due to the lack of precept and example and simple religious observance in family life.

Magistrates and others coming into contact with young offenders are often troubled by the complete lack of moral standards displayed by many of these young offenders who fear to be embarking on a career of crime. They show no pity for those weaker than themselves, no respect for the law or even for rules of conduct that should be taken for granted, and no loyalty to any except perhaps members of their own gang. They are quick to resort to violence and the use of weapons. As one experienced social worker expressed it, there is nothing by which you can make an appeal to them, because they have no sense of moral standards or even of fair play.

We are well aware that all this applies to a comparatively small number of young people, but there is evidence that the number is increasing in spite of all the efforts to deal with the problem. Quite apart from those who appear in the criminal courts and help to swell the prison and borstal population, there is a far larger number who, even if they do not come into collision with the law, show the distressing symptoms of antagonism to all discipline and a lack of any sense of duty. All who are interested in the welfare of young people, whether as officials or in other capacities, recognize the problem and its gravity, but they do not intend to be defeated by it in the long run.

Direct Labour Tenders

The advocates of direct labour commonly complain about the unfavourable position in which direct labour departments are placed when they have to tender for jobs in competition with outside contractors. Several reasons are given for this situation. It is claimed that local authority conditions of employment in relation to superannuation, holiday pay and sick pay are more favourable and therefore more expensive than those enjoyed by workmen employed by contractors; that local authority administrative control and procedure, being concerned with public money, is necessarily more cumbersome and expensive than that which satisfies a private builder, and that a department which is unsuccessful in its tendering will find it difficult to maintain its labour force.

We confess to being unimpressed by any of these complaints. Clearly the object in all cases should be to get public work done at the lowest possible expenditure of public money: this aim no sectional interest should be allowed to deflect. The extent to which tenders should be obtained is a matter for the discretion of each authority: obviously it may be convenient and cheaper overall that certain work should not be competed for, for example maintenance

jobs falling below a cost limit reasonably low in relation to the size of the authority and the extent of the work being done. The grant regulations of certain Government departments deal with the matter. For example, the Ministry of Education lay it down that capital jobs estimated to cost more than £4,000 can be carried out by direct labour only when they have been obtained in competition with private contractors. The Ministry also favour competitive tendering for jobs estimated to cost between £1,000 and £4,000.

There is one major point, however, where in some cases in the past inaccurate cost estimating has caused the tenders of direct labour departments for capital works to be over-stated. We refer to the matter of oncost rates. It has not been sufficiently appreciated that for several reasons oncost attributable to a capital job where a direct labour department regularly undertakes both maintenance and capital work is less than that incurred on maintenance works. There are a number of reasons: for example the costs incurred for superannuation, holiday and sick pay are relatively much lower because more temporary labour is employed and the cost of stores handling is less because more materials are delivered direct to the site. It should not be overlooked also that the cost of employing a clerk of works is eliminated when a job is done by direct labour.

A detailed analysis of overheads, item by item, will produce more accurate figures against which those submitted by contractors may be reliably tested.

THE PRISON COMMISSION REPORT, 1957

By FRANK DAWTRY

The Report of the Commissioners of Prisons for 1957 (Cmnd. 496, H.M.S.O. 9*s.* 6*d.*) tells a story which is becoming familiar—more overcrowding, a further rise in the prison population, more efforts to find accommodation, and a pretty obvious sense of disappointment that the ever present hope of getting on with some constructive and personal work is yet again deferred. The rise in crime in the last three years, and particularly the great increase amongst the number of teen-age offenders, has meant a particularly disproportionate increase in committals to borstal, and so, far from closing down borstal institutions the Commissioners have found it necessary to take over Dover corrective training prison, and also to use the newly built modern prison in East Yorkshire, for borstal purposes. And now, corrective training figures which were falling are beginning to rise again, so a new problem will soon have to be met.

Meantime the old prisons remain unsatisfactory, 4,000 men are sleeping three in a cell, sanitary conditions which are inadequate even where there is one man per cell have to suffice, and there is no money to spend on making necessary improvements—though some minor improvements are reported in one or two places. It is a sad and sorry story, and the Commissioners are not to be blamed for the slow progress being made. Every one of them would like to see smaller units, manageable relations between prisoners and staff and between staff and officials, but conditions deny them any but the most limited opportunities for training and treatment, and leave them with little to do but keep solid warehouses full of men and hope against hope for no major incident or epidemic.

The plain facts are that the daily average population of the prisons and borstals rose from 20,900 at the end of 1956 to about 23,000 by the end of 1957, and a note adds that the rise continued into 1958. The actual average over the whole year of 1957 was 22,368, and the increase was entirely in the male population, but within that population it was spread over all categories. In their task of dealing with a swollen population the Commissioners are not helped by the constantly moving population of persons on remand or committed to await sentence, and their report stresses "how regrettably large a proportion of the efforts of the staff . . . must be diverted outside the function of training persons convicted of crime." Thirty-one thousand nine hundred and eighteen men and 2,061 women were received into prison under sentence; but another 32,581 men and 2,398 women passed through prison on remand, for inquiries or to await sentence and of these 9,875 men and 563 women did not come back on conviction, some of course being acquitted but many of the rest receiving other forms of sentence. It seems a pity that so many had to see and experience something of prison conditions though their offences or circumstances did not ultimately justify prison sentences. In fact only 59·3 *per cent.* of the men and 49·9 *per cent.* of the women in prison were there to serve sentences for indictable offences, and it is a little startling to know that those passing through prison included 43 boys awaiting removal to approved schools, and 4,061 men and 183 women under 21 who were not subsequently sent to prison on conviction. In many of those cases (acquittals excepted of course) the magistrates or higher courts must have felt that an appropriate treatment was one designed to keep the offenders out of prison but these young people had seen prison and had been there in overcrowded conditions where they were something of a nuisance to an overworked staff. This is not a good introduction to any alternative method of treatment, though its use as a deliberate policy in some "judgment respited" cases is understandable.

There are other factors brought out in the report which emphasize yet again the need for remand centres and other remand facilities as well as for the greater use of remand on bail, for instance in cases where the purpose of the remand is only to obtain a psychiatric or medical report. In these cases the prison doctor will do his best, but an outside doctor may be equally capable of making an all round assessment for the court. Prison doctors have their hands full without dealing with those inquiries for the courts which could be satisfied by other methods.

Disturbing Features

The figure of receptions of those sentenced to imprisonment also covers some very disturbing features. For instance 5,539 of those received on sentence were sentenced for non-payment of fines, and of these 2,714 *including 40 men and 27 women under 21* were committed without being given time to pay. Even more disturbing is the statement that of the receptions under sentence of imprisonment 1,441 men and 102 women were under the age of 21, and of these 321 men and 41 women had no previous convictions, a matter to which the Commissioners drew special attention. Section 17 of the Criminal Justice Act, 1948, provides that no person under the age of 21 shall be sentenced to imprisonment unless no alternative reasonably presents itself to the court; and, by

s. 107 (3) of the Magistrates' Courts Act, 1952, in the case of the magistrates' courts reasons for the decision must be given in writing. The effect of s. 17 was very marked at the outset in that the offenders under 21 sentenced to imprisonment dropped from 2,703 in 1948 to 1,288 in 1949 and in 1954 the figure was as low as 1,170. There has been a steady rise since then, and this is a matter which might well be examined again, particularly as this section of the 1948 Act was the model for the recent First Offenders Act, 1958. When introducing the latter to the House of Commons in February, 1958, Sir George Benson said that the effect of s. 17 of the Criminal Justice Act was "spectacular" and that it had instantaneously reduced the number of young people sent to prison by one-half and that it had remained at one half. Unfortunately the 1957 figure takes it above the half-way mark by comparison with 1948, but the effect is still noteworthy.

New Legislation

The effect of the new Act may not be so noticeable, but it ought eventually to mean some reduction of the prison population, for the current report shows that 4,936 men and 608 women in prison were first offenders—about 18 *per cent.* of the whole of those serving sentences. The Act will of course make a heavier demand on the probation service, relieving the responsibilities of the Home Secretary in the prison administration, but providing a new problem of finding the necessary probation officers. The Maintenance Orders Act, 1958, ought also to reduce the prison population a little, for the report reveals that in addition to the prisoners received under sentence or for temporary purposes, over 7,000 prisoners were received under civil process including 3,692 for failure to meet payments under wife maintenance or affiliation orders. Some, at least, of these should be helped to avoid imprisonment in future by the use of attachment orders.

It is also distressing to note that two mothers under the age of 21 were sent to prison for cruelty to children—surely they were not too depraved to be trained by other means? And 96 of those sent to prison for this offence had never been in prison before. It is hard to believe that all these now broken homes were beyond repair. The report also shows that even in this enlightened age of public provision, 241 people were sent to prison during the year for sleeping out—how does this still come about?

The impression gathered from the report as a whole is that so much time of the prison staffs has to be spent in looking after prisoners for whom prison has little likelihood of providing any training, that the training experiments are themselves limited by lack of officers and lack of accommodation. When the debtors and all the remand prisoners are left out of account, the fact remains that of those received in prison on sentence, over 68 *per cent.* of the men and nearly 85 *per cent.* of the women were serving sentences of not more than six months and in fact nearly a quarter of the men and more than 40 *per cent.* of the women were committed for sentences of not more than five weeks. Even a six months' sentence, with remission, means in fact four months, and in very few sentences of that length can there be any opportunity for training or treatment.

Magistrates, however, must be very exercised in their minds when faced with comparatively minor, but probably persistent offenders, and their alternatives to imprisonment are limited to fines, which in these days of inflated earnings may have no punitive meaning and can in any case have no reformative effect, or the use of probation which involves calling on an already heavily burdened service. For young offenders detention centres and attendance centres provide a wider range of choice, but perhaps the time is coming when some yet further alternative provision is required.

Hopeful Factors

When all the difficulties created by overcrowding and the use of prison for purposes not originally intended have been taken into account, this Report can still provide considerable feeling of hope underlining only the obvious comment that "if only . . ." there were less pressure still better things could be done. For instance, of star class prisoners discharged in the years 1953–54, 87 *per cent.* of the men and 89 *per cent.* of the women had not been reconvicted up to the end of 1957. And of discharges since 1950, only eight *per cent.* of the stars who served in open prisons, and 14 *per cent.* of those who served in other prisons have been reconvicted. For the ordinary class the reconviction rate since 1950 has been 20 *per cent.* for those who were in open prisons, 23·6 *per cent.* for those from the closed prisons; and while the reconviction rate of those sentenced to corrective training has been 35 *per cent.* where they served in closed establishments, the rate amongst those who were in open prisons has been only 17 *per cent.* This shows that the open prisons are very well worth while, even though their success can be accounted for to some extent by the fact that the more hopeful prisoners are likely to find themselves there. When it comes to ordinary prisoners and corrective trainees, however, this shows the wisdom of the selection made for training in open conditions and is a matter for encouragement.

The work of detention centres is also examined in some detail though only two of them have been open long enough for a pattern of conduct to be seen; so far about half those who have passed through detention centres have been reconvicted within two years but for those sent to detention centres as first offenders the success rate rises to two-thirds. The reconviction rate seems to be falling however and there cannot be any doubt that increased experience of selection for this form of training, and constant modification in methods used, must combine to make for greater success. There is an unfortunately high reconviction rate in all the groups of young offenders sent to penal institutions and of those who were committed to imprisonment 27 *per cent.* discharged in 1956 were back in prison or borstal in 1957, and of those discharged in 1954 over 40 *per cent.* had received further prison or borstal sentences by the end of 1957. As the Home Secretary has repeatedly advised against imprisonment for these young people, no one can complain about the bad results.

After Care

In the field of after care it is good to know that more prison welfare officers are likely to be appointed and that at Bristol a plan is in hand to co-ordinate the work of the prison welfare officer with the work of outside bodies and individuals in the same field. The report mentions that one prisoners' aid society has "to put the prisoner more at his ease" reduced its case committee for interviewing purposes to two members and a chairman working by rota. To the present writer this is rather late news, as the West Riding Discharged Prisoners' Aid Society did the same thing at Wakefield prison as long ago as 1934. A most interesting experiment at Cardiff prison is described. Here, an induction unit has been introduced, and prisoners arriving at that prison spend the first two weeks in a separate unit where they

learn of prison routine and methods, of the efforts being made to put their prison time to the best use and of the general plan of training. This is a welcome innovation, for most prisoners who first arrive in prison are faced with a bewildering situation and learn the ropes from a mass of cards they are in no fit state to read or from their fellow prisoners, who may not be the best tutors.

Tribute to Magistrates

The report also comments on new experiments in prisoner-staff relations with the extension of the "Norwich experiment," and mentions an interesting session at one prison where a group of Prison Commissioners and officials sat round a table with a group of prisoners to discuss some of the problems of the prison. In a number of prisons, prisoner committees now exist for limited purposes mainly connected with recreation and leisure activities. It is also reported that a number of prisons have their own magazines, following the pattern set at Ley Hill by *The New Dawn* now some years old.

The participation of laymen is not forgotten however and in addition to a warm appreciation of prison visitors and teachers, the Commissioners pay a gracious tribute to the work of visiting committees and boards of visitors, which are almost entirely made up of magistrates who devote time additional to that demanded by their normal functions, to the oversight of the work of prisons, to providing an opportunity for appeal by any aggrieved prisoner and to representing the outside world in the administration of prisons. The Commissioners record once again their deep sense of obligation to those who so well carry out this important work.

DEPARTMENTAL EVIDENCE

We have spoken already about the steps taken by the Minister of Housing and Local Government to give effect to the Franks Report: steps which will presumably be followed by other Ministers who have not yet declared themselves. In connexion with those steps, a correspondent has drawn our attention to an omission, upon which he has been in communication with the Lord Chancellor's advisers. That omission is in regard to disputes between local authorities, with which the Franks Committee was not primarily concerned: we shall speak of such cases later in this article. Our correspondent's letter has, however, led to our looking again at some points arising on the Committee's report, especially the part of it which dealt with evidence to be given at public inquiries directed by a Minister who has to reach a decision upon the subject of inquiry. Here the Committee spoke amongst other things of information which might reach the deciding Minister either from his own staff or from other Government departments.

Hitherto it has not been the practice to produce such information at the inquiry, except in the form of an opening statement which was not subject to cross-examination. The Committee laid down the general principle (though with exceptions to be noted below) that if such information forms part of the material upon which the Minister will reach a decision after the inquiry it should, where a public inquiry is held, be given in the form of evidence at the inquiry, when it could be tested by cross-examination on the part of persons affected. The general recommendation did not, however, apply expressly to all cases in which the deciding Minister might have received such information. First, the Committee speak of public inquiries, and not (at this point) of cases in which, in accordance with para. 4 (2) of sch. 1 to the Acquisition of Land (Authorization Procedure) Act, 1946, the deciding Minister directs a hearing and not a public inquiry.

This omission might seem logical, since the purpose of a hearing as distinct from an inquiry is to enable persons who have lodged objections to state their objections orally. Strictly no other persons are entitled to appear, and a statement on behalf of the promoting authority is not theoretically essential because, *ex hypothesi*, persons affected already know the proposals to which they are objecting—though in practice such a statement has been regularly made at hearings no less than at inquiries. This omission by the Committee is, however, apparent rather than real because, in para. 311, the Committee have already proposed that hearings, as distinct from inquiries, should no longer take place in cases involving acquisition of land.

A second omission from the Committee's recommendation about departmental evidence is that it applies, to its full extent, only where the proposal to which an inquiry relates originates with the Minister holding the inquiry. This is a little strange, inasmuch as the Committee had recognized in para. 307 that, as we ourselves said at p. 318, *ante*, it is often accidental whether a project originates with a Minister or with some other authority.

Upon careful analysis of the Committee's report when it comes to deal with the production of evidence from Government departments, it seems to diverge from the broad line it had followed in the first part of chapter 22, under the heading "Procedure at the inquiry." It had already recommended in para. 281, under the heading "Procedure before the inquiry or hearing," a statutory requirement, that a written statement should always be supplied to persons affected, at the same time as the notices already required by statute. This should be done (the Committee recommend) whether the project originated with a Minister or with a local or other non-ministerial authority. Then in para. 308 in chapter 22 it begins with a recommendation that whether proposals are initiated by a Minister or by a local or other public authority there should be a further statutory requirement, that the proposals should be fully explained and supported by oral evidence at the inquiry itself. But when chapter 22 comes to speak in more detail about evidence, in para. 314 and the following paragraphs, the report introduces a distinction. Where a project originates with a non-ministerial authority, and a Minister has to adjudicate upon it after a public inquiry, his own officers should not, in the Committee's opinion, be required to give evidence. Officers of another department, however, should (the Committee say) be made available as witnesses if their opinions have been mentioned in the statement furnished in advance, or are mentioned in the oral evidence of the promoting authority. It seems from para. 318 that the Committee contemplate this availability of departmental witnesses (other than from the department of the deciding Minister) whether the project under inquiry has been originated by the deciding Minister or by some other authority, whereas under para. 317 witnesses from the deciding Minister's department will only be available when the proposal under inquiry is his own. Although this was

what the Committee said and the Minister had in the circular of February last confined himself in terms to what seem to us the more difficult cases (namely those where the Committee was explicit), we thought upon first perusal of the circular that he was going further, *i.e.*, that production of this sort of information in all cases was implicit. We have learnt since that no such implication was intended, and we are inclined to think that there is here a matter which might advantageously be given further consideration by all Ministers who have deciding duties. It was on the assumption that once the Minister of Housing and Local Government had decided to accept the recommendation of the Franks Committee in the more difficult case he would follow it up by taking the same course in ordinary cases, that we reminded readers at p. 319, *ante*, of the *Arlidge* story. When a Minister agrees to disclose at a public inquiry the advice he has received about projects of his own, and allows his advisers and those of other Ministers to be examined upon facts and about their professional opinions in cases where he has originated the project, it might seem at least logical, and no more embarrassing to the Minister, to allow his advisers to state in public the purport of discussions they have had with the advisers of a local or other public authority, where the latter has originated the project under inquiry. Let us take a case of everyday occurrence where there is no conflict about the taking of a private person's land. A local authority proposes to erect a building and is considering two possible sites. Each has some advantages, and each is objected to by residents who do not want that sort of building in their neighbourhood. The local authority's advisers and perhaps the chairman of the appropriate committee confer with the Minister's officers, and the council decides upon one site rather than the other. Loan sanction is applied for, and a public inquiry takes place. The council's own advisers, and perhaps a policy witness in the person of the committee chairman, give evidence and are cross-examined. It is known to opponents and has probably been stated at meetings of the council that these witnesses have conferred with the Minister's officers before coming down in favour of the site which is proposed. It must be difficult for the objectors to believe that, when the report of the inspector who held the inquiry is being examined in Whitehall, there will be no bias in favour of the course of action which has been discussed already. It would help such persons to believe that the ultimate decision was impartial, if they could be told the reasons which had moved the Minister's advisers to prefer one site to the other in earlier discussions.

In a press notice issued with the circular, it was said that civil servants will attend inquiries to give evidence where a Government department has expressed positive views which form part of the local authority's case. They will be liable to cross-examination on questions of fact and expert opinion, but not on questions of ministerial policy. This statement, of part of the purport of the circular, must however be read with qualifications. Not only does it not apply at all (as already explained) to many ordinary cases, being limited by para. 3 of the circular itself to inquiries held on behalf of the Minister of Housing and Local Government (i) into orders for the compulsory purchase of land; (ii) into clearance orders under part III of the Housing Act, 1957; and (iii) in cases arising under part III of the Town and Country Planning Act, 1947. Even in regard to compulsory purchase, para. 14 of the circular shows that the statement does not—where the purchase is by a local authority—apply unless the views expressed by departmental officers at an earlier stage form part of the local authority's case, *and* (the italics are ours) are referred to as such in the written statement furnished in advance of the inquiry to those affected by the intended purchase. Where departmental opinions are thus referred to, the opposition can give notice that personal appearance of departmental witnesses is desired, and they will then be made available. This may involve a bigger gap, in the protection afforded to the private person, than appears at first sight. It looks as if a local authority can obtain the advantage of departmental guidance, and frame its proposals in such a way as will satisfy the deciding Minister and other government departments, without formally disclosing in its written statement given to its opponents in advance, or at the stage of inquiry, that these discussions have taken place, or that its proposals have been so framed as to be acceptable in Whitehall. Once more we ask, how is the person deprived of land to feel confident that justice has been done? As in the class of case already mentioned, he probably knows that the prior discussions in Whitehall have taken place; often he will have been told about them, in the course of an informal visit to his land by the local authority's officials, or they will have been mentioned at a council meeting reported in the newspapers, but the council can exclude their purport from the public inquiry.

What we have been saying so far springs from the circular of February 9, which itself springs from chapter 22 of the report of the Franks Committee. Paragraph 308 in that chapter recommends (always subject to the limitations of scope to be found earlier in chapter 22) that, whether proposals are initiated by the Minister or by a local or other public authority, there should be a statutory requirement that the proposals be fully explained and supported by oral evidence at the inquiry. We have shown that the Committee had elsewhere suggested that hearings, as distinct from inquiries, should no longer take place in the cases dealt with in chapter 22, thus widening the recommendation in para. 308. We have shown that, on the other hand, para. 308 seems to be narrowed, perhaps inadvertently, by para. 317. We have shown that, in some cases, the Minister of Housing and Local Government has, in the circular, gone further than paras. 317 and 318 appear to contemplate, towards meeting the suggestion in para. 308.

But para. 308 itself is conditioned by para. 306, which takes " procedures concerning land " as involving the crucial issue, and leaves on one side all other cases of ministerial jurisdiction especially and directly affecting private persons.

In our experience, however, the dual function of professional and other members of the staffs of government departments is just as important to remember in the numerous cases with which the Committee was not avowedly dealing in chapter 22. Wherever a local authority proposes to carry out works, it can arrange for its own advisers to obtain informal guidance in Whitehall in the preliminary stages. At a later stage there will often be a public local inquiry, typically related to sanction for a loan. After the inquiry the appropriate Minister will want advice about any new facts ascertained at the inquiry, about the validity of any legal objections which may have been put forward at the inquiry, and often about the weight to be attached to evidence given at the inquiry by professional witnesses on both sides. Persons who believe themselves to be adversely affected, who are not necessarily threatened with the acquisition of their property, may be suspicious when they know that the promoters of the project, whatever it may be, had an opportunity of discussing it in private in advance, with the same officials who will have the duty of advising the Minister upon the inspector's report.

We conclude that there is a case for making departmental witnesses available from every department which has been involved, where private persons consider themselves to be adversely affected. The whole point here is that, both in the sort of case dealt with by the Franks Committee and in the more common cases going to inquiry with which that Committee was not concerned, one side has already had the advantage of conferring in the absence of the other with the officers of the deciding Minister, and may either have influenced the minds of those officers or been influenced by them to adopt a certain line. In either case, the Minister's officers may (it will be thought) be inclined to advise the Minister in a sense conforming to what they have said at the preliminary conference. But (to return to the cases affecting local authorities alone, mentioned at the beginning of this article) it does not follow that the same principle applies, even when a public local inquiry is held. It may happen, for example, that two or more local authorities have opposing interests, and that representatives from all of them are invited to confer with the Minister's officers locally or in London. The conference may not produce agreement, and accordingly it may be necessary to let the matter be thrashed out at a public local inquiry. This stands quite apart from those considered by the Franks Committee. No purpose would be served in this sort of case by calling upon the Minister's officers who had taken part in the preliminary conference between local authorities to state publicly, subject to cross-examination, what they had already told the parties in each other's presence, and it would be improper to seek by cross-examination to elicit from them the conclusions they had personally reached after meetings at which both sides had been present together.

LOCAL GOVERNMENT FINANCE—FOR THE BEGINNER

(*Continued from p. 585, ante.*)

FINANCE OF LOCAL EXPENDITURE

Ties Between Local and Central Government

Local authorities are not completely masters of their own fate financial or otherwise, because they are subject to the control of the central government. They were created by Acts of Parliament and, in general, can do only those things which they are authorized to do by Act of Parliament: that is, a local authority cannot do a particular thing merely because there is no law which specifically says it must not do that thing. This principle becomes a financial restriction upon the activities of local authorities, since doing things invariably means spending money.

How strong should these ties with the central government be? This is a thorny question—on the one hand one would like to see local government as free and independent as possible, but on the other hand reasonable standards must be ensured and irresponsibility and extravagance guarded against. There is an old saying that " he who pays the piper calls the tune," and, whilst the present state of affairs exists whereby the greater part of the expenditure of local authorities is met out of government grants, a fairly tight control by the central government is inevitable. It may be mentioned here that the present Government have stated that it is their policy to encourage a shift of the incidence of local expenditure from taxes to rates, and at the same time to reduce central control over the local authorities wherever possible.

The finance of local expenditure

The first essential is to distinguish between capital and revenue expenditure, and, avoiding technicalities as far as possible, a broad definition of these two categories is attempted.

The cost of a brand new building, the land which goes with it and its furniture and equipment, new plant, machinery and vehicles, new water mains and other such things (all commonly called fixed assets) is capital expenditure. So, too, is the cost of enlarging or improving a fixed asset. Expenditure upon the provision of new roads, bridges, sewers, sea defence works and such things (usually called fixed outlay) and improvements and extensions to the same is also capital expenditure.

Revenue expenditure includes the cost of maintaining, repairing and renewing fixed assets and outlay and the day to day expenses of running a local authority's ordinary services, including the salaries, wages, national insurance and superannuation of employees. Revenue expenditure also includes the loan charges on money borrowed to finance capital expenditure. More will be said about this later.

The experienced financial officer might raise questions which would tend to complicate these definitions and it should be mentioned, perhaps, that certain expenditure strictly of a revenue character, for example the renewal of fixed assets and outlay, may be financed by borrowing (and therefore treated as capital) if the authority is able to obtain a loan sanction from the appropriate government department. In the ordinary way, however, a local authority cannot borrow to meet revenue expenditure.

How Capital Expenditure is met

There are two main methods of financing capital expenditure, *viz.*:

(*a*) Borrowing—the power to borrow money is given by Acts of Parliament, subject generally to the granting of a loan sanction, usually by the Ministry of Housing and Local Government, and to repayment over a specified period of years.

(*b*) Pay as you go—this means charging the capital expenditure to revenue in the year in which it is incurred.

Borrowing is expensive because not only has the loan to be repaid but interest has to be paid as well—a costly item at all times, but especially in the present era of high interest rates. For example, a new school costing £100,000 spread over 40 years eventually costs about double that amount, even at a normal rate of interest.

The cost of repaying loans with interest is called loan charges, and this annual sum becomes part of the ordinary revenue expenditure of the authority. " Pay as you go " is more economical because interest on borrowed money is saved, but to meet in any year more than a modest portion of capital expenditure in this way would generally impose too heavy a burden on revenue and hence upon the local rates. However, whenever this method can be used it is excellent.

How Revenue Expenditure is met

Revenue expenditure is met mainly from government grants and from local rates, but also to a limited extent from other miscellaneous income. The latter source is not very significant unless we include trading service charges and rents from local authority estates, but in addition to these items, which may be large for some authorities and small for others, there are contributions for residents in homes, hostels, boarding schools and

the like, charges for the provision of meals and work and services chargeable to other authorities, bodies, and persons.

After taking into account this miscellaneous income the bulk of the local expenditure still remains and is met from grants and rates. In the year 1955–56, based on total figures for the whole of England and Wales, this was done in the approximate ratio of five to four, or to put it simply, for every £5 contributed by the government only £4 was contributed by the local ratepayers. This gives the overall position, but for some local authorities the ratio was more like three to one.

The relative importance of grants and rates is rather surprising. One might have expected that grants would supplement or augment the local resources, but at the present time the reverse is the position. This position has been brought about by the growth of local expenditure in the post-war period, first because of the great expansion in education, welfare, and other services and secondly by the effect of inflation. At the same time there has not been an equivalent relative expansion in rateable resources. While expenditure grew and grew, rateable resources all but stood still, and from this morass emerged bigger government grants. It may be well at this point to reflect upon the following quotation, "any concern which depends for its existence upon the financial backing of a much larger organization will lose its independence."

The reason for and basis of government grants will be dealt with in the next article.

(To be continued)

MISCELLANEOUS INFORMATION

QUESTIONS FOR THE FINAL EXAMINATION

[*By courtesy of the Law Society, we are able to give below the Questions for the Final Examination, held on Wednesday, June* 18 (2.30 *p.m. to* 5.30 *p.m.*)]

A(1)—THE PRACTICE OF MAGISTRATES' COURTS, INCLUDING INDICTABLE AND SUMMARY OFFENCES; MATRIMONIAL JURISDICTION, BASTARDY, JUVENILE COURTS, TREATMENT OF OFFENDERS, CIVIL JURISDICTION, COLLECTING OFFICERS' DUTIES, THE ISSUE OF PROCESS, EVIDENCE IN CRIMINAL CASES, AND LICENSING.

(*Questions* *1, *2 *and* *3 *are compulsory.*)

*1. It is alleged that Jones has obtained £100 by false pretences in the county of X and that Smith, knowing that it was so obtained, received the said sum in the county of Y where he resides. Jones is now believed to be in the county of Z. The police at Z apply to a magistrate there for warrants of arrest against both Jones and Smith. Has he jurisdiction to grant either or both warrants to bring the accused before a court at Z ?

*2. Small amounts due in respect of income tax are recoverable summarily as a civil debt. After a magistrates' court has made an order for payment, how may such order be enforced ?

*3. Harold, aged 13 years, appears before a juvenile court and is proved to have committed two offences of wilful damage. The justices do not desire to send Harold away from home, but consider that he is in need of supervision and should, if practicable, be punished in addition. They also feel that Harold's father should take a greater interest in his son's conduct in the future. What orders might be made which would conform with the justices' views ?

(*Attempt seven and no more of the remaining questions.*)

4. Mary, aged 12 years, is the illegitimate child of Joan and they both normally reside with Joan's parents, Mr. and Mrs. Lawson. Mary fails to attend school regularly and a fit person order is made placing her in the care of the local authority. Mr. and Mrs. Lawson now apply to adopt Mary and Joan gives her consent. What consideration should the justices give (*a*) to the rights of the local authority ? (*b*) to the desirability of granting an adoption order ?

5. Silas, a café proprietor, had been the holder of a justices' licence for many years. It was last renewed in 1956. In January, 1957, Silas became ill and closed his business. He failed to renew his licence in 1957. By the end of that year, his health having improved, Silas wished to re-open his café. Was there any method whereby he might have obtained a justices' licence without paying monopoly value ?

6. A clerk to the justices in England has received from the Home Office a copy of an order made in New Zealand in favour of Mrs. Roberts whereby her husband was ordered to pay her £5 per week maintenance. When the order was made, the parties lived in New Zealand, but Mr. Roberts has now come to reside within the borough for which the clerk acts. What steps must the clerk take to register the order ? Subsequently, Mr. Roberts inquires whether he may apply to the clerk's court for a reduction in the weekly payments. How should he be advised ?

7. P, who resides in London, was involved in an accident while driving a motor-cycle in York. Subsequently, some question arises as to his identity and the York police write to P requiring him to give information regarding the driver of the machine. P replies stating that he was the driver. He is thereupon summoned for driving without due care and attention, but fails to attend upon the hearing. May P's written statement that he was the driver be accepted in evidence ?

8. M is charged with larceny. Before the justices he elects summary trial and pleads not guilty. On his application, the proceedings are then adjourned for him to obtain legal representation. At the adjourned hearing, M's solicitor states that his client now wishes to be tried by jury. The prosecutor submits that the previous election of summary trial is binding upon M. How should the justices be advised ? Would this advice be affected if M's solicitor first applied to withdraw consent to summary trial after the first witness for the prosecution had given evidence ?

9. Paragraph 65 of the Highway Code provides "Do not let your vehicle stand in the carriageway . . . near a road junction or a bend." A has placed his car in such a position in the daytime. B, driving his car in the same direction, runs into the back of A's vehicle. B is charged with driving at a speed which was dangerous to the public. How far is B entitled to plead A's non-observance of the Highway Code as a defence to the charge against him ?

10. Vera, a single woman, has given birth to an illegitimate child. She alleges that the putative father is a regular soldier stationed 50 miles from where Vera resides. What special provisions apply relating to the service of an affiliation summons upon the defendant ?

11. William is charged with bigamy in that he married Edna during the life of his wife, Alice. At the hearing before the examining justice, both Alice and Edna inquire whether they are bound to give evidence against William. What advice should be given to the examining justice ?

12. In 1940, Mr. and Mrs. Jackson entered into a separation agreement whereby the husband agreed to pay £3 per week for his wife's maintenance. Payments have been regularly maintained. Mrs. Jackson claims that this amount is now inadequate having regard to her husband's present income. Is there any method whereby she may obtain increased maintenance on application to a magistrates' court ? Both parties are resident in England.

A(3)—LOCAL GOVERNMENT LAW AND PRACTICE

(*Questions* *1, *2 *and* *3 *are compulsory.*)

*1. The rural district of Mudbury consists of 12 parishes. Owing to development it is considered desirable to make the parish of Loambury and part of the parish of Nottamun into a single urban district, and to transfer the parish of Queenton and the remaining part of the parish of Nottamun to the Oldton rural district (in the same county). How can this be effected ? Do not deal with any effect of the Local Government Bill now before Parliament.

*2. The Barsetshire county council resolve to delegate to all rural district councils in the county: (*a*) The maintenance and repair of unclassified roads, and (*b*) the care of children deprived of a normal home life. The district councils are prepared to accept the delegation. What is the effect of the resolution ?

*3. Outline briefly the purpose and membership of a local valuation court. Who may appear before the court ? Is there any appeal from its decisions ?

(*Attempt seven and no more of the remaining questions.*)

4. The Ayton corporation make the following byelaw: "The owners of all houses let as dwelling houses shall carry out a complete internal decoration in the calendar year 1958 and every fifth year thereafter." If confirmed, would this byelaw be valid ?

5. John is a member of the Loambury parish council and of the Mudbury rural district council. A dispute arises between the two authorities over the allocation of council houses, and representatives are appointed to discuss the matter. John is appointed by both councils. The representatives meet twice, once in Loambury, and once at the rural district council offices at Mudbury. Can John claim travelling and subsistence allowances ?

6. The Muddlecombe borough council have successfully petitioned for the grant of a separate court of quarter sessions for the borough (*a*) Who will appoint the Judge and clerk of the court ? (*b*) Will the justices of the county in which the borough is situated have any jurisdiction in the borough ?

7. In what way do the provisions of the Local Government Act, 1948, as to exchequer equalization grant apply to London ?

8. (*a*) In the parish of Hobbiton, by an oversight, no steps were taken to elect a parish council within the time limited by law. What can now be done to rectify this ? (*b*) All the members of the Buckland parish council have fallen ill, and are unlikely to be able to transact any business for some months. What steps can be taken to deal with urgent matters ?

9. What sewers are public sewers ?

10. What powers of delegation has a county council as local planning authority ?

11. What restrictions are there on the right of a landowner to free access to a highway which adjoins his property ?

12. Outline the provisions of the Education Act, 1944, as to religious instruction.

MEDICAL STAFFING OF HOSPITALS

The joint working party on medical staffing of hospitals has elected Professor Robert Platt, P.R.C.P., as its chairman. This working party was appointed by the Minister of Health, the Secretary of State for Scotland and the Joint Consultants Committee, to study, in the light of experience of the hospital service since 1948 and of all other relevant considerations, the principles on which the medical staffing structure in the hospital service should be organised.

The working party is inviting Regional Hospital Boards, professional organizations, including organizations of specialists and the associations of hospital authorities, to submit statements of evidence. Any other body or person who desires to submit evidence should notify one of the joint secretaries before the end of October. The joint secretaries are Mr. N. C. Rowland, of the Ministry of Health, and Dr. D. P. Stevenson, of the British Medical Association.

CANCER REGISTRATION

The Supplement to the Registrar-General's Statistical Review for 1953, on Cancer, published recently, is concerned with the development and treatment of cancer at eight sites and is based on data obtained from the National Cancer Registration Scheme. The primary objectives of the scheme are to obtain information about the incidence of cancer according to the site of the primary growth and about the survival of patients suffering from cancer.

The introduction to the supplement reviews briefly the history of the scheme, which since 1947 has been organized by the General Register Office in collaboration with the Ministry of Health. The scheme is based on the voluntary registration of cases by hospitals. The scope of registration has steadily improved and will be further extended in the future.

INDUSTRIAL HEALTH

We referred at p. 355, *ante*, to the report on industrial health based on a survey at Halifax. The Industrial Health Advisory Committee of the Ministry of Labour and National Service then suggested that action should be taken in several ways including the training of persons in first-aid.

The Ministry has now announced that a new edition of the First Aid in Factories Order is to be issued which will apply to some 255,000 premises covered by the Factories Acts. So as to stimulate recruitment and training in first-aid the Ministry has been in consultation with the St. John Ambulance Association and the British Red Cross Society and worked out with them plans for launching a series of local drives to urge firms to review the existing arrangements for first-aid in their factories and to consider whether, to make these adequate, advantage should be taken of the training facilities available in the locality.

AMENDMENTS TO INTERNATIONAL COPYRIGHT RULES

An Order in Council (S.I. 1958 1258, which came into operation on August 11) dealing with copyright matters, entitled the Copyright (International Conventions) (Amendment) Order, 1958, changes the effect of the Copyright (International Conventions) Order, 1957, in two respects, *viz*: (i) Reciprocity of term in international relationships between this country and other countries, parties to either of the Copyright Conventions, is no longer required. (ii) It adds the Republic of Ireland to the list of countries which receives full copyright protection for their sound recordings.

The first change arises from an assurance from the government of the U.S.A. that British works which are protected by the Universal Copyright Convention (*i.e.*, which bear the Convention Notice) will enjoy the full term of protection available in the U.S.A. (56 years from publication) subject only to the formality of registration at the end of 28 years. With this assurance, the entire doctrine of reciprocity of term can be dropped, since almost all other important countries already give the same term as the United Kingdom (life of the author, plus 50 years). A great advantage will be that all works, domestic and foreign, will have the same term of protection and there will be no need for our courts to consider the foreign law.

ROAD CASUALTIES — JUNE 1958

Road casualties in Great Britain during June numbered 26,961, a decrease of 429 compared with June, 1957. The killed numbered 457, the seriously injured 5,922 and slightly injured 20,582.

The Road Research Laboratory estimate that traffic on main roads increased by five *per cent.* compared with June, 1957.

In the first six months of this year there were 12,979 more road casualties than in the same period last year when petrol restrictions were in force until mid-May. Figures for January to June, 1958, were 2,600 killed, 30,371 seriously injured and 100,046 slightly injured. Casualties among drivers numbered 18,429 compared with 12,772 for the same period in 1957—an increase of about 44 *per cent.*

ADDITIONS TO COMMISSIONS

NEWCASTLE UNDER LYME BOROUGH

George Albert Johnson, Wildacres, Manor Road, Madeley, nr. Crewe.

Albert James Leeding, Lee Croft, Newcastle Road, Ashley Heath, Market Drayton.

Albert Eric Walchester, 25 Belfield Avenue, May Bank, Newcastle, Staffs.

Reginald Adolph Lovatt Wenger, Old Rectory Standon, nr. Eccleshall, Staffs.

PLYMOUTH BOROUGH

Miss Una Valerie Dampney, 41 Seymour Park, Mannamead, Plymouth.

Dr. Stephen Moriarty Davidson, Glengarry, Hertley, Plymouth.

Frederick Redmore Dunstan, Greengates, Southway Lane, Crownhill, Plymouth.

Mrs. Mary Beatrice Grills Gill, Morningside, Yelverton, nr. Plymouth.

Joseph Harold Denithorne Lobb, M.B.E., Albany House, Albany Place, Plymouth.

Arthur William Cumbe Lyddon, 15, Bainbridge Avenue, Plymouth.

Harold John Maxwell-Jones, 14 Cranmere Road, Higher Compton, Plymouth.

Eric Donald Nuttall, 8 Alma Villas, Plymouth.

Peter Cecil Stedman, Huccaby, Derriford, Crownhill, Plymouth.

Mrs. Edna Charlotte Tate, 57 Normandy Way, St. Budeaux, Plymouth.

David Ladner Trahair, Pound Cottage, Yelverton, S. Devon.

Edgar John Trout, Bucklands, Fort Austin Avenue, Crownhill, Plymouth.

NOW TURN TO PAGE 1

The number of justices sitting to deal with a case as a magistrates' court shall not be greater than seven. (Justices of the Peace (Size and Chairmanship of Bench) Rules, 1950, r. 1 (2).)

CORRESPONDENCE

The Editor,
Justice of the Peace and
Local Government Review.

DEAR SIR,

"AUTHORITY TO PROSECUTE"

Referring to your editorial comment upon the above at 112 J.P.N. 479, you invite readers' comments upon a proposition that an ancient chartered corporation is just as much a person known to the common law as is a human being, and that the corporation may exercise the usual rights of a litigant to appear before the Queen's courts in person, through their mouth-piece, their town clerk.

The first half of the proposition is well settled law: *see Anon* (1484) Jenk. 162; *Sutton's Hospital Case* (1612) 10 Co. Rep. 1a; Jenk 270; *Re Sheffield and South Yorks Permanent Building Society* (1889) 22 Q.B.D. 470 at p. 470, *per* Cave, J. More recently we have the *obiter dictum* of Farwell, J., in *A.G.* v. *Manchester Corporation* [1906] 1 Ch. 643 at p. 651; 70 J.P. 201, that "a corporation incorporated by Royal Charter, speaking generally, can do anything an ordinary individual can do."

To digress, the concept of a juristic person goes back at least to A.D. 200, for we have it in Ulpian's Book on the *Edict* (Dig. 3, 4, 7, 1): "*Si quid universitati debetur, singulis non debetur; nec quod debet universitas singuli debent.*"

The question who may, in the Queen's courts, represent a corporation is bedevilled by extraneous complications. We have the view of Coke, C.J., in *Tipling* v. *Pexall* (1614) 2 Bulst. 233; that "touching corporations, they are invisible, immortal and have no soul; and therefore no *subpoena* lies against them, because they have no conscience or soul. A corporation is a body aggregate. None creates souls but God, the King creates them and therefore they have no souls; they cannot appear in person, but by attorney." One modern difficulty of this case is that the 20th century counterpart of the 17th century attorney is a solicitor and not a barrister-at-law.

As to solicitor town clerks, although a solicitor is an officer of the Supreme Court of Judicature he has no right of audience there in open court or at Assizes, or even at quarter sessions if there is a local bar. This is because counsel have exclusive right of audience as advocates before:

The House of Lords sitting as an Appeal Tribunal (*Tritonia, Ltd.* v. *Equity and Law Life Assurance Society* [1934] A.C. 584, H.L. (Schedule)).

The Judicial Committee of the Privy Council.

The Court of Appeal (*Re Ellerton* (1887) 3 T.L.R. 324, C.A.).

The High Court (Supreme Court of Judicature Acts, 1873, s. 23; 1875, s. 21. Supreme Court of Judicature (Consolidation) Act, 1925, ss. 32, 103 (1)).

Assizes.

The Central Criminal Court.

In most courts of quarter sessions the rule is to give exclusive audience to barristers when a sufficient number attend. The making of such a rule is within the jurisdiction of quarter sessions (*ex parte Evans* (1846) 9 Q.B. 279. Annual Statement of the General Council of the Bar, 1920, p. 6.)

As to barrister town clerks, the matter has been settled by the Annual Statements of the General Council of the Bar, 1907–8, p. 12; 1914. p. 24; 1925, p. 6; and 1945, p. 12, which prescribe that non-practising barristers in salaried employment may not appear on behalf of their employers as counsel (as regards local authorities, nationalized industries and statutory corporations, courts of summary jurisdiction are excepted—Annual Statement, 1949, p. 12).

Whilst the subject has a right to pursue his own actions in person in the Queen's courts, a corporation, although a *persona legitima*, is invisible, and has neither conscience nor soul, and must therefore be represented by a human being. It is suggested that a corporation, chartered or otherwise, can be represented in the courts above cited only by counsel. This is, at least, true of statutory corporations: *Frinton U.D.C.* v. *Walton Sand, etc. Co.* (1938) W.N. 31.

Yours faithfully,
EDWARD S. WALKER.

135 Walkwood Road,
Hunt End,
Redditch, Worcs.

PERSONALIA

Mr. J. R. Archer-Burton, O.B.E., at present chief constable of Hastings and St. Leonards, has been appointed chief constable of the North Riding to succeed Lieut.-Colonel J. C. Chaytor, C.B.E., D.S.O., M.C., who is retiring on reaching the age limit on November, next. The appointment is subject to Home Office approval. With the exception of war service, Mr. Archer-Burton, who is 45 years of age, has spent the whole of his life in the police service, and has been chief constable of Hastings since 1954. Colonel Chaytor was appointed in 1929 at the age of 40 after a distinguished military career. He was awarded the D.S.O. and the M.C. and certain Allied decorations during the first world war. The King's Police Medal was conferred upon him in 1944 and he was made a Commander of the Order of the British Empire in the New Year's Honours list in 1953. He was only the third chief constable of the North Riding in the 102 years of their existence. The standing joint committee, at their meeting, instructed that their appreciation of his service as their chief constable should be recorded in the minutes.

Superintendent Eric Arthur Abbott, of Leeds, has been appointed chief constable of Worcester in succession to Mr. Glyn Davies. Mr. Abbott is 48 years of age. He has been in the Leeds city police force since 1932 and gained rapid promotion. In 1947 he was detective chief inspector, and seven years later he was made superintendent. Mr. Abbott has attended courses for senior officers at the Police College, and also courses in civil defence and atomic warfare. He holds the Queen's Coronation Medal, the Police Civil Defence Medal, and the Police Long Service and Good Conduct Medal.

Sir Charles Martin, chief constable of Liverpool, has been appointed an inspector of constabulary. He will retire on pension before the end of October to take up this appointment.

Mr. P. C. Kenwood, formerly a Home Office trainee, will take up his duties as a probation officer in the Middlesex combined probation area on September 1, next.

Mr. Roger C. Price and Miss Jane L. Brooke have been appointed probation officers to serve the city of Bradford. Both are at present training under the Home Office scheme and will take up their duties in Bradford on September 1, next.

MAGISTERIAL LAW IN PRACTICE

The Western Morning News. June 21, 1958.

MAN LET HIS SON OF 15¼ DRIVE CAR

Told by the chairman of the magistrates, Lieut.-Col. R. Chamberlain, that they had deliberately flouted the law, a man and his 15¼-year-old son were fined a total of £44 at Bridgwater yesterday for offences involving the use of a car.

William Holland, junr., of the Pines, Buncombe Hill, near Taunton, was fined £1 for driving under the age of 17; £2 for having no insurance; £2 for using a licence with intent to deceive; and £2 for using an insurance certificate for the same purpose. His father, William Holland, senr., was fined a total of £37 for permitting the offences and disqualified from driving for six months.

Chief Inspr. R. A. Kemp said that on May 9 the police saw the boy driving a car at Broomfield. He produced a driving licence in his own name which appeared to cover him, but then admitted that it belonged to his father, who had the same name. He also produced an insurance certificate in his father's name covering the policy holder.

Giving permission for the boy's name to be published, the chairman said he hoped it would be a warning to others.

In this case a father was charged with permitting offences by his son, and the case would be heard in the adult court (s. 46, Children and Young Persons Act, 1933). The permission of the chairman to publish the boy's name was not necessary. Section 49 of the Children and Young Persons Act, 1933, which restricts the publication of particulars calculated to lead to the identification of children or young persons applies only to proceedings in juvenile courts. Section 39, which gives any court power to prohibit the publication of certain matters which might lead to the identification of any child or young person concerned in the proceedings, relates only to proceedings in the court "which arise out of any offence against, or any conduct contrary to, decency or morality."

REVIEWS

The Modern Law of Real Property. Eighth Edition. By G. C. Cheshire. London: Butterworth & Co. (Publishers) Ltd. 1958. Price 55s. net.

We have reviewed earlier editions of this work, and it is a pleasure to welcome the edition now before us, which has been a good deal recast since the seventh appeared in 1954. Although the subject of real property is not one with which Parliament has interfered constantly (since the revolutionary statutes associated with Lord Birkenhead) there have been important changes in that part of it which deals with contracts of tenancy, while the position of a landowner has been rendered unstable by the Town and Country Planning Act, 1947, and legislation following thereon. Nevertheless, the substantial framework provided by the classification of estates remains, and four years of comparative freedom from legislation has made it possible for Professor Cheshire to think out some helpful recasting of this eighth edition. Some of the changes made are in the arrangement of the subject, such as the distinction between incumbrances and beneficial interests carrying a right to possession, and in the placing of matter relating to strict settlements and trusts for sale. These very technical aspects of the law of property involve details which may perplex the student, and their treatment has now been divided, so as to deal separately with the nature of these various interests and (in a later part of the work) with the mode of transferring an interest after it has come into existence. This rearrangement has made it possible to amplify the account of the statutory powers of a tenant for life so that the general framework of a strict settlement, the statutory powers, and the trust for sale are considered as one whole, and brought into a prominent position in the book. Some matter about the destructibility of legal contingent remainders has been omitted as no longer necessary, fascinating as it is to the historian of English law. The treatment of licences, as distinct from leases or other estates, has been reviewed, and there is new matter on the subject of security of tenure, necessitated by the new law for business premises and agricultural holdings, as well as for long leaseholds and small dwellings. Most important of the new features is a restatement of the nature of estates in land at common law, understanding of which is necessary even today, by way of an introduction to the legislation of 1925. In his preface to the first edition in that year Professor Cheshire spoke of Lord Birkenhead's Acts as intended to simplify the law, but as involving for the time being the necessity of learning two legal systems where real property was concerned. He prophesied that for 20 or 30 years at least it would be necessary for the practitioner to be acquainted with the old law as well as the new, and after more than 30 years the necessity remains. It may not be as important now for the purpose of investigating titles as it was a generation earlier, because a root of the title is more likely to be found at some date later than 1925, but it remains true that nobody can understand the Acts of 1925, which form the basis of the present system, unless he knows what was the law which they were altering. It has been the merit of this work in successive editions that it has given the student an adequate acquaintance with the old law, without concentrating his attention in detail upon legal history, and that it has told him all he needs to know (for purposes of becoming qualified) about the law as it began to be shaped in 1925, without encouraging him to ignore what went before.

The first 100 pages comprise six sections grouped together as book I. Substantially these are historical and introductory, explaining the common law with its long course of modification by equity, and leading up to the present law of settlements. Once this has been mastered, the student will in section V find a brief summary of what was done by recasting the law into its modern shape. Surprisingly at first sight, it is only after this that a chapter is inserted on the definition of land; this restates the classical quarrel between Blackstone and Austin about the nature of corporeal hereditaments, and goes on to treat of fixtures as the courts have handled them—an illustration of the learned author's faculty for passing from theory to its practical application as required by the student.

It is, indeed, worth while to remind the student, as is done at the beginning of the book, that the modern law of real property could never have come into existence, or been adapted to the requirements of a commercial community, without the intellectual achievement of the common lawyers centuries ago—namely the conception of estates in land distinct from the land itself.

Passing to consider further the arrangement of the book, as this has developed through its numerous editions, we now find that the fee simple (appropriately placed first among estates in land) soon diverges into an explanation of the effect upon the freeholder's position of the Town and Country Planning Acts. The learned author speaks of the "drastic and often startling" nature of the control exercised by local planning authorities, and to most lawyers there may be something "startling" in the idea of placing this form of control in such a prominent position. None the less it is desirable that the student should learn at an early stage how little the landowner can, at the present day, do what he wills with his own. Textbooks have in the past treated of the various interests in land by comparison one with another and in proper sequence, until the reader would naturally suppose that the owner of the largest interest known to the law was substantially free to use his land as he saw fit. It is one of the merits of the present work that the student can no longer be under such a misapprehension.

So again, it may be strange to the old fashioned lawyer to find that early in the book one leaves the description of freehold interests to start exploring the framework and the effect of a strict settlement and the operation of a trust for sale. Here again we think the learned author has been logical, by placing first the things which the modern student needs to know, even though they are interests which originally took effect in equity and would at one time have been postponed to an enumeration of purely legal interests.

Part III of book II bears the title, unusual in a work upon real property, of "commercial interests" and begins with more than 100 pages about leaseholds. The distinction, between interests arising under a strict settlement headed by life interests and entailed interests on the one hand, and interests which are a matter of contract, must always have been recognized in the study of real property, but it has been usual to treat interests in a descending hierarchy without sharply separating those which are here classed as "commercial." This adjective covers not merely leaseholds but also easements and profits, restrictive covenants, rent charges and mortgages. This collocation is unusual but it will be helpful to the student. The old distinction between restrictive covenants binding at common law and in equity is made quite plain, and there are ample extracts from judgments as well as from the Law of Property Act, 1925, and its statutory predecessors.

Book III deals with the acquisition, transfer, and extinction of estates and interests. It falls into parts, classifying transfers according as they are *inter vivos* or by will or on intestacy. Last of all come incapacities and disabilities affecting the holding and transfer of estates and interests. This part of the book comprises more than 200 pages and amounts to a full treatise on a part of the law of real property which, perhaps, comes into the daily work of the private practitioner more than any other.

The work is completed by an appendix on the Rent Acts contributed by Mr. J. B. Butterworth of Lincoln's Inn. This differs from ordinary books on those Acts, in that it is closely linked to conceptions of property which the student will have acquired in the earlier portion of the book. It is, in other words, designed to enable him when he comes to practise to see in perspective the troublesome problems produced by the Rent Restrictions Acts. It differs also from the general run of works upon these Acts in that "old control" is relegated to a note of less than a page, the remaining 60 pages of the appendix being devoted to explaining how the law stands after the Rent Act, 1957.

We have found the book so attractive that we are the more sorry to be obliged to call attention to one flaw. This is that the table of cases gives no references, except those to the page on which a decision will be found. Moreover, the reference in the footnotes to the pages is frequently limited to a single report, or to two reports in the period covered by the All England series. When reviewing law books we have consistently pleaded for the provision of a full apparatus of references, pointing out that the articled pupil in a solicitor's office, and even the university student, may often be unable to lay his hand when it is wanted on the particular report cited, where only one is given. It is vital to legal education that pupils shall be induced to find the law in the reports, instead of taking the word of textbook writers for it; to this end as many references should be given as can be accommodated on the page, or in the table at the beginning of the book. The publishers of the present work have nearly always

maintained an admirable practice in this matter, and we regret to find in this instance that they have lapsed from grace. Apart from this, we have no adverse comment, on the form of the book—any more than on its substance. It is well printed and pleasingly got up, and it will form a valuable addition to the works available, both for private acquisition and in libraries, for law students at the universities and for others at an advanced stage of studying law. It is also well worth adding to the book shelf of the practising lawyer.

Sir Rhys Hopkin Morris, M.B.E., Q.C., M.P., Ll.D. A Tribute to the Man and His Character. By T. J. Evans, M.B.E. With an Introduction by the Right Hon. Viscount Samuel. J. D. Lewis & Sons, Ltd., Aberystwyth, 45 North Parade. Price 2s. 6d.

In this small book, Mr. Evans gives a vivid picture of Hopkin Morris, which all who knew him will recognize as a faithful likeness. It is, as Lord Samuel writes, a "success story but success won in scorn of success."

Sir Rhys, who died nearly two years ago, was a son of the manse and of the soil, who had a varied and distinguished career, during which he displayed qualities of mind and character that few men possess so richly. Perhaps what most struck those who came into contact with him was his inflexible adherence to principle to the exclusion of expediency and ambition. What he believed to be right, that he did, whatever the consequences to himself. In the Army, where he served with distinction, he was prepared to risk unpopularity with his fellow subalterns and to incur the displeasure of his colonel in vindication of principles. Later in life he sacrificed the chance of ministerial appointment rather than join a government with whose policy he agreed in the main but with which he disagreed on one point which many people would have thought unimportant.

He played many parts. After the Army came practice at the bar and a seat in Parliament. Then for a few years he was a metropolitan stipendiary magistrate. From this he went to Wales as head of the B.B.C. Then back to Parliament, ultimately becoming deputy chairman of the Committee of Ways and Means, in which office he died. At one time it seemed not unlikely that he might be elected Speaker.

Men of uncompromising principle always command respect, but not always affection. Hopkin Morris earned both by his friendliness, good humour and modesty. His is a story of a life well lived, full of happy relationships and of service to his fellows.

Lawful Pursuits. By Michael Underwood. London: Hammond, Hammond & Co. Price 10s. 6d. net.

This book is a novel in one of the publishers' "Cloak and Dagger" series, and has all the usual attributes of the good thriller: it is fast moving, and holds the reader in suspense until almost the last page. For the lawyer, however, it has the additional interest of a legal background—the author is a member of the bar—and the scene is set at the West End magistrates' court. We will not attempt to describe any part of the plot—as this would destroy some of the pleasureable relaxation readers will obtain by reading the book: it is a novel to be recommended.

INNOCENTS ABROAD

You can recognize them at once. They stroll slowly and aimlessly (in the midst of hurrying crowds) along Oxford Street, laboriously spelling out the lettering of its rather tawdry shops, and gazing curiously at the displays in the windows. They try, in a leisurely way, to cross busy traffic arteries in the wrong places, and are driven back again and again to the safety of the kerb. They stand bunched at the junctions of those narrow passages in the Underground, studying the directions for finding "west-bound" and "east-bound" trains, and get hopelessly tangled up with the rushing millions who pass that way twice daily, five days a week. They sit on benches in the public parks, writing reams of letters in a strange, continental hand, or addressing picture-postcards by the score. Their clothes are un-English; their behaviour quite unexceptionable, but somehow slightly outlandish. They have cameras slung over their shoulders, and rucksacks on their backs. Their every movement is hesitant or deprecating; their voices, even when they speak English, have a foreign *timbre*. They are part of the now receding flood of this summer's tourists, and their minds and senses are busily recording impressions which they will carry back to Munich and Uppsala, to Grenoble, Milan, Milwaukee and Barcelona, to be retailed to their families, colleagues and friends, and to be ultimately lodged in the storehouse of memory until they are overlaid by those of another year.

It is curious that the English, who in the eighteenth and nineteenth centuries were the pioneers of foreign travel for the sake of pleasure and experience, have no single word in their language to express that meaning. *Tourisme* to a Frenchman, *turismo* to an Italian, speak volumes; such words call to mind an industry which every year brings thousands of visitors, and millions in dollars and sterling, to lake and mountain, *fjord* and *fjell*, cathedral-city, art-gallery and museum, abroad. But to an Englishman *tourism* is a foreign-sounding word, while *tour* and *touring* have now much narrower meanings than their French or Italian equivalents. Yet, 150 or 200 years ago, the "Grand Tour of Europe" was the finishing school in the education of every young man in the best English families—not only poets, like Byron and Shelley, or art-critics like Ruskin—to name only two or three by way of illustration—but also the scions of noble families, and the sons of the idle rich, who had no pretensions to or understanding of the art-treasures of the Prado, the Uffizi or the Louvre. These latter gambled, philandered and blustered their way across the Continent, regarding and treating the nationals of the countries through which they travelled in much the same way as some narrow-minded British officials, 60 or 70 years ago, used to behave towards those to whom they applied the strangely opprobious words "natives," in India, Africa and the Treaty Ports of the Chinese and Turkish Empires. Financial stringency at home, and nationalism abroad, have changed all that.

One of the most worldly-wise of the Essays of Francis Bacon is entitled *Of Travel*:

> "Travel, in the younger sort, is a part of education; in the elder, a part of experience. . . . The things to be seen and observed are the courts of princes, especially when they give audience to ambassadors; the courts of justice, while they sit and hear causes; the churches and monasteries, with the monuments that are therein extant; the walls and fortifications of cities and towns, and so the havens and harbours; antiquities and ruins; libraries, colleges, disputations and lectures; shipping and navies; houses and gardens of state and pleasure near great cities; armories, arsenals and magazines; exchanges, burses, warehouses; exercises of horsemanship, fencing, training of soldiers, and the like; comedies, such whereunto the better sort of persons do resort; treasuries of jewels and robes; cabinets and rareties."

Bacon's traveller would have his work cut out! Much of this, alas! would to-day bring the foreign visitor within the purview of the Official Secrets Acts, or their continental equivalents; but the suggestions are shrewd. So is the following passage:

> "When he stayeth in one city or town, let him change his lodging from one end and part of the town to another, which is a great adamant of acquaintance. Let him sequester himself from the company of his countrymen, and diet in such places where there is good company of the nation where he travelleth."

This last injunction is one which the average Englishman abroad is prone to disregard—a characteristic which Dr. Johnson no doubt had in mind when he remarked to Boswell:

> "Why, Sir, a man may travel all over Europe, without ever seeing anything better than his dinner."

But let us return to the foreign visitors to our shores. They are of two principal varieties—those on pleasure bent (mostly, we suspect, from Mediterranean lands), and those—chiefly of Teutonic or Scandinavian origin who are intent on acquiring knowledge and first-hand experience of English customs and institutions. Many of the latter class are to be seen poring over maps and plans, or listening with rapt attention to the words of wisdom that fall from the lips of custodians and guides:

> "For lust of knowing what should not be known,
> We take the Golden Road to Samarkand."

There are plenty of models of both kinds. Casanova ought to be the patron saint of the former, though it is to be doubted whether he would find much scope for his activities in post-war England. Travellers of the second type are better known—precisely because they took more trouble to record their impressions. Herodotus, in the fifth century B.C.; Marco Polo, who travelled on foot and horseback from Venice to China and back, in mediaeval times; Sir John Mandeville, in the 14th century—such men have left to posterity vivid records of their impressions There used to be a third class—those who journeyed in search of adventure, and delighted in strange encounters and hair-breadth escapes—Sindbad the Sailor, Robinson Crusoe, Phineas Fogg, and the pioneers and explorers of real life. But most of the romance has been taken out of that kind of travel since the advent of the aeroplane, the radio and, above all, the travel agencies—the last-named of whom will book you a trip across the Sahara or the Gobi Desert with as much nonchalance as a week-end to Paris. This was so even in Alphonse Daudet's time; when the little Frenchman, Tartarin of Tarascon, is contemplating a holiday in the Alps, and hesitates at the dangers he may have to face, his adviser tells him not to worry; if he *does* happen to fall into a *crevasse*, a polite, uniformed courier will be waiting to receive him at the bottom, with the inevitable question—*Monsieur n'a pas de bagages?*

It is the travellers of the second type—those with an intense thirst for knowledge—who, if they are not very careful, will be setting up as authorities and writing books on English institutions when they return home after a stay of a couple of weeks in this hospitable land. Such an one was Count Smorltork "the famous foreigner, gathering materials for his great work on England"—as Mrs. Leo Hunter introduced him to Mr. Pickwick:

> "'Have you been long in England?' enquired Mr. Pickwick, with all his usual affability.
> 'Long—ver long time—fortnight—more.'
> 'Do you stay here long?'
> 'One week!'
> 'You will have enough to do,' said Mr. Pickwick, smiling, 'to gather all the materials you want, in that time.'
> 'Eh—they are gathered!' said the Count, tapping his fore-head significantly. 'They are here. Large book at home—full of notes, music, picture science, poetry, poltic; alltings.'
> 'The word *politics*, Sir,' said Mr. Pickwick, 'comprises in itself a difficult study of no inconsiderable magnitude.'
> 'Ah!' said the Count, drawing out the tablets again, 'ver good—fine words to begin Chapter 47—Poltics. The word poltic surprises by himself—' and down went Mr. Pickwick's remark, in Count Smorltork's tablets, with such variations and additions as the Count's exuberant fancy suggested, or his imperfect knowledge of the language occasioned."

A.L.P.

ANNUAL REPORTS, ETC.

Return of Rates, 1958–59

Although we have come to expect this wholly admirable publication each year to make its appearance as a matter of course, this only goes to underline the immense labour which must go into the compilation of each edition to make it such a useful and such a reliable guide. In all 671 authorities have their finances dissected. The return shows that average rates for 1958–59 generally show an increase on the previous year. The return is priced 7*s*. 6*d*. post free, from the I.M.T.A.

Wanstead and Woodford Borough

This is the eighth annual report of the borough, and is by far the most comprehensive of all reports to reach us, extending to 81 pages. It also has the distinction of being priced at 2*s*. per copy (6*d*. post)—which is one way of putting a proper value on the council's services. Every conceivable aspect of the council's affairs is given, and certainly no ratepayer could complain he was not being put in the full picture so far as his local government services at borough level is concerned.

Henley R.D.C.

Of modest dimensions, this brochure of Henley R.D.C. consists of reports of six standing committees. No price is charged, and for a sparsely populated area (or relatively so) where press coverage on the council's activities may leave much to be desired, it is a very convenient method of informing parish councils and members of the interested public of the nature of the work of the council.

Staffordshire County

This is a guide to the county services—which includes a number of photographs showing the various services "in action." It is unique among those county guides we have noted in that it includes a photograph of the county council in session. We do not know to whom this guide circulates—it seems too adult for schools, yet it would be a pity if such a publication's circulation were restricted to libraries and "on request"—the usual main outlets for county brochures such as this.

Sturminster Newton R.D.C.

This council's *Civic News Letter* which is published at irregular intervals throughout each year, is a splendid example of what a small council can achieve in the field of public relations with a chief officer showing real personal interest. Each issue shows most commendable "pre-thinking" to achieve a balance of readable matter concerning the council's work, the people who do the work, and other matters of general interest.

L.C.C.—Battersea Park

The L.C.C. has published a commemorative booklet relating to the centenary of what it describes as "one of the oldest municipal parks in London." It is certainly one of the best known parks in the world: this leaflet mentions some of the history showing how it came into existence. If we ever knew, we had forgotten—that in 1886 when the park was under the control of H.M. Commissioners of Works, the House of Commons refused to vote money for its upkeep as opinion in the provinces resented that London parks such as Battersea, Victoria, and Kennington were paid for out of national funds. Thus, the park came under the Metropolitan Board of Works in 1886, before being superseded by the L.C.C. in 1888.

NOTICES

The fourth series of lectures given under the auspices of the Institute for the Study and Treatment of Delinquency will be on the subject of "The Juvenile Courts," and will be held in the Hall of St. George's Institute (opposite the I.S.T.D. premises) on Wednesdays at 7.30 *p.m.*, the first being October 15. Further details may be obtained from the I.S.T.D., 8 Bourdon Street, Davies Street, W.1.

The I.S.T.D. is holding its autumn weekend conference this year at Beechwood Court, Harrogate. The subject will be "Homosexuality," covering the period November 7–9, 1958. Further details may be obtained from the I.S.T.D., 8 Bourdon Street, Davies Street, W.1.

PRACTICAL POINTS

All questions for consideration should be addressed to "The Publishers of the Justice of the Peace and Local Government Review, Little London, Chichester, Sussex." The questions of yearly and half-yearly subscribers only are answerable in the Journal. The name and address of the subscriber must accompany each communication. All communications must be typewritten or written on one side of the paper only, and should be in duplicate.

1.—Armed Forces—*Affiliation order—Expenses of birth—Enforcement—Army Act*, 1955, *s.* 150.

Thank you for your answer to my query at p. 591, *ante*, but I propose, with your consent, to trouble you a little further in the matter.

Would you not consider that the phrase "for the payment of any periodical or other sum specified in the order" must be read in conjunction with the words which follow, namely, "for or in respect of: (*a*) the maintenance . . . of any illegitimate child of whom he is the putative father."

If this is so what is your authority for stating that birth expenses are quite clearly an "other sum specified in the order" which can be recovered by compulsory stoppage. GANTAR.

Answer.

We cannot see our correspondent's difficulty. We do read the section in the way he suggests and we do not think it is straining the wording of the section unduly to say that birth expenses are a "sum specified in the order in respect of . . . the maintenance . . . of any illegitimate child . . ."

2.—Criminal Law—*Obtaining credit by fraud or other false pretence—Debtors Act*, 1869, *s.* 13—*Form of information.*

With reference to my query at p. 591, *ante*, as you state you cannot understand my reference to *Archbold* I thought I ought to write and explain.

Unfortunately, I was quoting from *Archbold*, 32nd edn., p. 1313. There it is clearly stated under particulars of offence ". . . obtain credit to the amount of £25 from the said J.N. under false pretences (or by means of fraud other than false pretences)." This is similar to *Oke*, and it seems to me can only be read as to imply that only one of the two alternatives should be stated in an information.

In *Archbold*, 33rd edn., what they have done is to knock out the brackets. But it is still not understandable why, if they only desire to show one offence, they do not keep to the reading of the section, *viz.*, obtained credit under false pretences, or *by means of any other fraud*. What do you think?

F. RASMON AGAIN

Answer.

We agree with our correspondent that it might be better if the wording of the section were used in the form of indictment in *Archbold*, but we think he would agree, firstly, that if the credit is obtained not "under false pretences" but "by means of any other fraud," it is implied that it is "by means of fraud other than false pretence," and, secondly, that the form of an indictment does not now need to be in such strict language as was once required. We agree that *Oke* implies that only one of the alternatives should be stated but, in this instance, we should prefer to follow *Archbold*.

3.—Criminal Law—*Salmon and Freshwater Fisheries Act*, 1923—*Forfeiture on conviction—Disposal of proceeds.*

With reference to your reply to P.P. 2 at 122 J.P.N. 423, have you not overlooked s. 115 of the Magistrates' Courts Act, 1952, which provides that anything other than money forfeited on a conviction by a magistrates' court shall be sold or otherwise disposed of in such manner as the court may direct, and the proceeds shall be applied as if they were a fine imposed under the enactment on which the proceedings for the forfeiture are founded.

A fine imposed under the Salmon and Freshwater Fisheries Act, 1923, is payable to the Secretary of State (Justices of the Peace Act, 1949, s. 27, and sch. 7). Thus, if there is a forfeiture, the proceeds will be payable to the Secretary of State. KESOL.

Answer.

We are grateful to our correspondent. We had overlooked s. 115 of the Magistrates' Courts Act in this connexion and we agree with what our correspondent says.

4.—Husband and Wife—*Separation agreement—Subsequent application for order for wilful neglect to maintain.*

I would be grateful for your advice concerning a case in my court. I enclose herewith a copy of a separation agreement between S and Mrs. S. This provides for the payment of £2 per week maintenance and also that they should not institute proceedings for restitution of conjugal rights or otherwise. Under the Maintenance Agreements Act, 1957, I appreciate that this latter clause is void but it seems to me that all that the Act does is to allow the court to vary the agreement by increasing or decreasing the amount of the maintenance payable. The wife, in this case, does not want any increase or decrease, but wants an order from the magistrates' court, which she considers is more easily enforceable and has applied on the grounds of neglect to maintain.

I would be grateful if you would let me know whether the justices have any jurisdiction to make an order in this case.

FLARIC.

Answer.

We agree that the Maintenance Agreements Act, 1957, would merely enable the wife to have the amount of maintenance varied. The existence of an agreement does not preclude the wife from applying for an order but, if she does, she has still to prove wilful neglect on the part of the husband.

The position is perhaps best expressed in the last sentence of the headnote to *Morton* v. *Morton* (1942) 106 J.P. 139; [1942] 1 All E.R. 273 in the J.P. report: "Such an agreement has, however, a high evidential value as a guide to the justices in the exercise of their jurisdiction and, if it provides for periodical payments by the husband and he has made them punctually, the wife will have difficulty in establishing that he has wilfully neglected to provide her with reasonable maintenance." That decision was approved in *Dowell* v. *Dowell* (1952) 116 J.P. 350; [1952] 2 All E.R. 141, where it was emphasized that while punctual payment was not conclusive, the question of wilful neglect was one for the discretion of the court, taking all the circumstances into account. In the present case, since the wife appears satisfied with what is paid under the agreement, we cannot see how she can obtain an order.

5.—Justices' Clerks—*Deputy—Appointment, by part-time clerk, of his partner as deputy.*

I have considered your P.P. 5 at 122 J.P.N. 408. It appears to me that your opinion is given entirely with whole-time staff in mind. I am a part-time clerk and am provided with a contribution towards the cost of providing part-time staff who spend the rest of their time in connexion with my private practice. I shall be glad of your views as to whether I have been entitled to appoint my partner as my deputy without reference to the magistrates' courts committee. He is, of course, unpaid.

JONMOR.

Answer.

We cannot find that anything is laid down on this point. The magistrates' courts committee appoint the clerk on the understanding, presumably, that *he* will perform the appropriate duties. Section 19 (6) of the Justices of the Peace Act, 1949, entitles a part-time clerk, *by arrangement with the committee*, to use his staff, accommodation and equipment partly for his duties as clerk. We should have thought that the implication is that if he proposes, save in an unforseen emergency, that his partner should act as his deputy, he should inform the committee, so that they may know what is proposed and may object if they wish to do so.

6.—Justices' Clerks—*Notes of evidence—Supply of copy to witness in Road Traffic Act cases.*

Application has been received for a copy of the notes of evidence taken in proceedings under the Road Traffic Act, 1930, from solicitors acting for a motorist who was a witness for the prosecution and with whose car the defendant collided.

(*a*) Are the solicitors entitled to such copy notes of evidence?

(*b*) Is it the practice for such a copy to be supplied?

M.S.L.J.

Answer.

We discussed this question in P.P. 2 at 106 J.P.N. 142. In our view the answers to the questions asked are:

(*a*) No.

(*b*) Yes, if the clerk is satisfied the copy notes are required in connexion with further legal proceedings, contemplated or pending.

7.—Licensing—*Beerhouse licence not renewed in* 1958—*Power of licensing justices to treat application for grant made in* 1959 *as application for renewal—Death of last licence holder—Transfer.*

We are acting for a client who is a relation of a deceased person who for many years held the licence of a beer house. In August, 1957, the licensee became ill and went to hospital. The usual notice about renewal was sent to the deceased by the police in October, 1957. The licensee was for practical purposes unable to give a decision and our client gave notice that there was no intention to renew. The licence, therefore, lapsed after the second annual general meeting in 1958.

In the meantime the licensee died in December, 1957, leaving a will and appointing two executors. Our client's problem is whether there is any procedure for resuscitating the licence otherwise than by an entirely fresh application, involving as it must, considerable expense and also monopoly value.

There is no difficulty in making our client either the owner or the tenant of the premises.

Our client has been advised that s. 11 of the Licensing Act, 1953, is not of advantage to him as what he really requires is a transfer and not a renewal and that s. 21 (4) (*a*) is relevant. The problem arises whether as there is no licence in existence there could be a transfer. The case of *R.* v. *Lawrence* (1883) 11 Q.B. 638 was decided under the equivalent of s. 21 (4) (*e*) and it was held that it was not necessary that the application should be made before the expiration of the period for which the old licence was in force and it would appear that similar reasoning applies to the present case.

We should be obliged if you will let us have your views whether the justices should approve the transfer. NIREN.

Answer.

In our opinion, transfer may be granted. The proviso to s. 11 (1) of the Licensing Act, 1953, empowers licensing justices to treat an application for the grant of a beerhouse licence made in 1959 as an application for renewal of the licence not renewed in 1958. We think that there may be said to be a justices' licence in *posse* rather than in *esse;* something capable of being renewed and so, in our opinion, capable of being transferred.

R. v. *Lawrence or Liverpool JJ.* (1883) 47 J.P. 596 is some authority for the view we hold, in particular when this case is read with that of *ex parte Todd* (1878) 3 Q.B.D. 407 which it held to have been wrongly decided.

8.—Probation—*Breach of requirement of probation order—Probation officer's report after proof.*

In "breach of probation" proceedings when the prosecutor, *i.e.* the probation officer, has proved the case or the breach has been admitted, does the probation officer cease to prosecute and revert to the normal role of reporting on the circumstances, home surroundings and the probationer's progress? The following very abbreviated case may serve to clarify the point.

A 13 year old boy admitted a breach of the requirement to report. During the probation period he had been stealing from home, wandering from home and truanting to an extensive degree. Should these additional facts be placed before the court or should the whole proceedings be confined to a simple statement that the boy failed to report on two successive weeks?

Again, the case having been adjourned three times (because he reported regularly) covering a period of seven months, there was a continuation of previous difficulties. Should the court be enlightened as to the full facts or is it correct simply to say that during the last remand period the boy failed to report on five occasions. Q. NIL DESPERANDUM.

Answer.

When the breach has been admitted or proved we see no reason why the court should not receive and consider a written report from the probation officer in accordance with the Summary Jurisdiction (Children and Young Persons) Rules, 1933, or an oral report if preferred.

The court should be informed of all relevant circumstances, including any which have arisen during a period of adjournment, subject to the boy's right to produce evidence as to matters which he disputes.

9.—Music, etc. Licence—*Whether required in respect of premises which proprietor entitles a "club."*

We have been consulted on behalf of a client, who wishes to open a coffee club. It is proposed that it would be a proprietory club and the members would have no control over the running or organization of the same. All these powers would remain vested in our client, who will provide the accommodation and the facilities.

Membership of the club would be open to any persons acceptable to our client and they would pay a nominal annual subscription of say 5*s.*, but would be charged admission every time they used the club premises. Our client would provide non-alcoholic refreshments and proposes to install a juke box, give live entertainment, and promote dances on the premises. There would be no question of any alcoholic liquors being sold or supplied.

We should much appreciate your advice as to whether or not a licence is required under the above Act for public music, dancing and singing, or other public entertainment of the like kind, bearing in mind that the facilities will only be available for club members and not for members of the general public.

Our own opinion is that possibly no such licence is required, if the annual subscription covered everything, but we are a little perturbed over the proposal to make a charge, every time the club premises are used. This charge will doubtless vary, according to the type of entertainment provided. Can you also please tell us, whether use of the premises for any of these purposes on a Sunday will contravene the Lord's Day Observance Act?

Finally, is there any authority laid down for the time which should elapse between a new member joining the club, and paying his subscription, before he is entitled to be regarded as a *prima facie* member and entitled to the facilities of the club?

OSINO.

Answer.

In our opinion, the scheme outlined by our correspondent is not one that avoids the necessity of obtaining a licence under s. 51 of the Public Health Acts Amendment Act, 1890. There seems to be nothing which distinguishes the premises under consideration from other premises used for public music, etc., except the use of the word "club" in the name of the business and the payment of an annual sum in addition to the price of admission to a single entertainment. Also, in our opinion, the scheme outlined does not avoid the provisions of the Lord's Day Observance Acts.

Except in the case of a registered club (*i.e.*, a club in which intoxicating liquor is supplied to members and their guests) the law says nothing about the time that must elapse between the nomination and admission of a member.

We answered a similar question in relation to a so-called billiards club at 115 J.P.N. 705.

10.—Theatre—*Theatre club—Acting of play disallowed by Lord Chamberlain—Whether offence under Theatres Act,* 1843.

Section 14 of the Theatres Act, 1843, gives power to the Lord Chamberlain to forbid any play and s. 15 imposes a penalty on "every person who for hire shall act or present" plays before they are allowed or after they have been disallowed. Section 16 defines "hire."

In my area an amateur theatre company acquired a small theatre, seating capacity approximately 100, and during the past season has presented four or five plays for which admission has been charged in the usual way and for which stage play licences were issued by the local authority.

Through the press the company has now announced its intention to form a "theatre club" and to present, occasionally, disallowed plays.

In order to function this company must rely wholly on receipts from its audience either by way of payment for admission or by subscription and I am of opinion that such payment fulfils the requirements of s. 16 and that presentation of any disallowed play by this company would be contrary to s. 15.

I learn, from press reports, that disallowed plays are presented from time to time in London and elsewhere but I am not aware of the circumstances connected therewith.

I shall be grateful for your opinion on this matter.

O. SIRROM.

Answer.

On the information given by our correspondent, we do not reject the idea that a genuine club will be formed, having lawful objects to which the presentation of "disallowed" plays is incidental, in which case we think that such a play, presented solely for the interest of members and their guests, may not be caught by the provisions of ss. 15 and 16 of the Theatres Act, 1843. It could be, on the other hand, that the use of the word "club" to describe what takes place is a simple device to cover the doing of something which otherwise is undoubtedly unlawful, and that what purports to be a subscription is in reality nothing other than a charge for admission paid as a lump sum.

The question whether or not the plays are presented for hire would fall to be decided largely as a question of fact in a prosecution.